

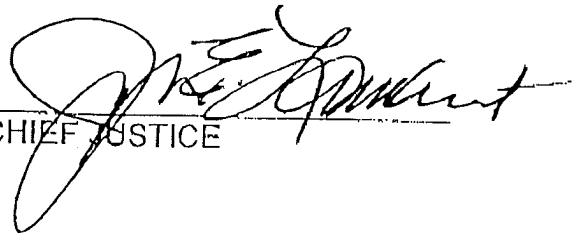
Supreme Court of Kentucky

ORDER

**IN RE: COURT RULES FOR MISDEMEANOR FAILURE OF OWNER TO
MAINTAIN REQUIRED INSURANCE/SECURITY FIRST
OFFENSE FOR THE 44th JUDICIAL DISTRICT OF BELL
COUNTY**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), and upon
recommendation of the Judge of District Court, and being otherwise sufficiently
advised: the Court Rules for the Misdemeanor Failure of Owner to Maintain
Required Insurance/Security First Offense, Bell County, attached hereto, are
hereby approved. This order shall be effective as of the date of this Order, and
shall remain in effect until further orders of this court.

Entered this 15 day of April, 2008.



CHIEF JUSTICE

**Bell District Court Misdemeanor Failure of Owner to Maintain Required
Insurance/Security First Offense Pretrial Diversion Rules:**

I. ELIGIBILITY REQUIREMENTS:

A. All persons charged in District Court with the commission of a misdemeanor for failure of owner to maintain required insurance/security first offense, shall be eligible for participation in the No Insurance First Offense Diversion Program, as an alternative to criminal prosecution unless the person was previously diverted to the No Insurance First Offense Diversion Program and failed to successfully complete the terms of the diversion or unless the person has a prior conviction for Failure of Owner to Maintain Required Insurance/Security.

B. Nothing in this rule shall be deemed to limit the authority of the County Attorney to withdraw criminal prosecution in any given case.

II. APPROVAL FOR PARTICIPATION:

A. Upon consent of both the County Attorney and the accused, the Trial Judge shall approve participation in the No Insurance First Offense Diversion Program for any individual who meets the eligibility requirements established in Section I above unless the Trial Judge is of the opinion that the No Insurance First Offense Diversion Program is inappropriate because:

1. There is a substantial risk that the accused will abscond from the jurisdiction of the Court prior to the fulfillment of the terms of the No Insurance First Offense Diversion Contract.
2. There is a substantial risk that the accused will commit another crime prior to the fulfillment of the terms of the No Insurance First Offense Diversion Contract.
3. The accused is in need of correctional treatment that can be provided most effectively by commitment to the county jail.
4. Participation in the No Insurance First Offense Diversion Program would unduly depreciate the seriousness of the accused's crime.

B. Consent of the County Attorney to the accused's participation in the No Insurance First Offense Diversion Program shall not be unreasonably withheld. If the County Attorney refuses to consent to the accused's participation in the No Insurance First Offense Diversion Program, he/she shall state on the record the reasons therefor.

C. Upon approval for participation in the No Insurance First Offense Diversion Program, the accused must sign a statement waiving his/her right to a speedy trial. Prior to signing this statement the accused shall be given the opportunity to consult with an attorney if he/she so desires.

D. Prior to approval for participation in the No Insurance First Offense Diversion Program, the Pretrial Services Officer shall present to the Trial Judge the comments and opinions, if any, of the arresting officer regarding the nature of the offense, the appropriateness of Diversion, and the suggested terms of the No Insurance First Offense Diversion Contract. While not binding on the Trial Judge, such comments and opinions, if any, shall be considered by the Trial Judge in determining approval or re-referral for participation in the No Insurance First Offense Diversion Program.

E. Participation by the accused in the No Insurance First Offense Diversion Program shall not constitute an admission or presumption of guilt of the crime charged and shall not be proof of guilt in any subsequent legal action; nor shall an accused be required to give a confession or an admission of guilt. Nothing, however, contained in this paragraph shall alter or affect the accused's obligation to perform all the terms of the No Insurance First Offense Diversion Contract, including restitution, where agreed.

F. All records of the No Insurance First Offense Diversion Program, and all statements made by the accused to the diversion officer regarding the offense for which the accused was placed on diversion shall be privileged, shall not be admissible or discoverable for any purpose; shall be exempt from subpoena; and shall be deemed confidential except for the program staff, the Trial Judge, and the District Judge, for the purposes of program review, monitoring and supervision and shall not be released to any other person or entity without the prior written consent of the District Judge and the accused. Nothing in this paragraph shall be deemed to prohibit release of information to the victim of the alleged crime regarding the accused's participation in the No Insurance First Offense Diversion Program.

G. Upon approval for participation in the No Insurance First Offense Diversion Program, the County Attorney shall present to the Court any special terms, if any, which he/she believes should be included in No Insurance First Offense Diversion Contract. Although such requests are not binding on the Court, they shall be considered by Court when approving the No Insurance First Offense Diversion Contract.

H. Upon approval for participation in the No Insurance First Offense Diversion Program, the Trial Judge shall note on the Court docket any special term(s) that he/she is requiring to be included in the No Insurance First Offense Diversion Contract.

III. THE DIVERSION CONTRACT:

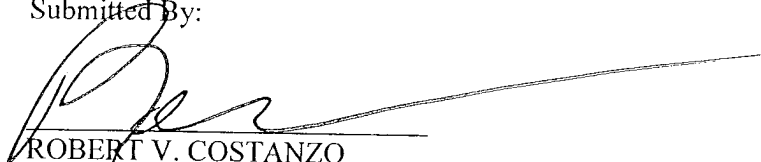
- A. Upon approval of participation in the No Insurance First Offense Diversion Program, the accused shall meet with a Pretrial Officer to establish and agree to a formal contract which will specify the conditions required, the referral services to be used, the length of the contract, and the need, if any, for the accused to make required restitution or perform community service. The contract shall be presented for final approval to the Court, and upon its final approval, the terms of diversion shall commence. The No Insurance First Offense Diversion Contract shall contain any special terms required by the Court.
- B. The normal contract on each accused shall be for a period of not more than 6 months, unless lengthened by the Court.
- C. The accused must comply with all provisions of the No Insurance First Offense Diversion Program. Violation of contract provisions will subject the accused to termination of diversion participation and reinstitution of criminal prosecution.
- D. At any time, the accused may voluntarily choose to be terminated from the No Insurance First Offense Diversion Program by submitting a written statement indicating same. Where the termination is prior to the expiration of the contract period and without the consent of the Pretrial Officer, the Pretrial Officer shall refer the case to the County Attorney for prosecution. If the accused does not comply with conditions of his/her No Insurance First Offense Diversion Contract, the Court may enter an Order terminating the accused's participation in the program, or direct the resumption of the accused's participation in the diversion process and reinstatement of the No Insurance First Offense Diversion Contract, with any modifications offered by the Trial Judge. As with the original No Insurance First Offense Diversion Contract, the accused must agree to the contract modifications, if any, prior to reinstatement.
- E. Upon termination for non-compliance, the County Attorney may initiate prosecution of the accused upon the original criminal charge(s).
- F. Upon successful completion of the No Insurance First Offense Diversion Contract, the underlying criminal charge shall be formally and fully dismissed, and all official records of said charge shall bear the notation that said charge was dismissed-diverted.

IV. ADMINISTRATIVE FEES:

The fee for participation in the No Insurance First Offense Diversion Program shall be in

the amount set by the Director of the Administrative Office of the Courts. The Court may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.

Submitted By:



ROBERT V. COSTANZO
District Judge 44th Judicial District